

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NANCY L. JAMES, Chapter 7 Trustee

Plaintiff,

v.

JAMES C. PATON, *et al.*,

Defendants.

Civil Case No. C15-1914RSL

ORDER DENYING MOTION FOR
RECONSIDERATION

On January 25, 2017, the Court found that the debtor, Breast Cancer Prevention Fund (“BCPF”), was not entitled to utilize joint cost allocation during the relevant time period. Clark Nuber seeks reconsideration of this ruling on the grounds that (a) there is a genuine issue of fact regarding Clark Nuber’s responsibility and liability for the improper use of joint cost allocation and (b) the Court erred in not deferring to Clark Nuber’s professional judgment and/or its experts’ opinions regarding how to apply SOP 98-2. Neither argument is persuasive. The Court did not make a finding regarding whether Clark Nuber was or was not negligent in the preparation of BCPF’s tax returns and audits: that issue was expressly reserved. Nor has Clark Nuber shown that the Court manifestly erred when it concluded that the undisputed facts of this case establish that it was improper to use joint cost allocation under the plain, non-technical terms of SOP 98-2. The motion for reconsideration is DENIED.

1 In the alternative, Clark Nuber seeks certification of the summary judgment order for
2 immediate appeal to the Ninth Circuit. This matter has been stayed so that the validity and scope
3 of the Attorney General's claim in In re Breast Cancer Prevention Fund, Case No. 13-16150-
4 MLB, can be resolved before the parties invest any more time or money establishing causation
5 and/or damages in this proceeding. An appeal of the joint cost allocation issue at this point
6 would multiply proceedings and would likely waste the time and resources of all involved. The
7 request for certification is DENIED without prejudice to it being raised again by motion when
8 and if the stay is lifted.¹

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10 Dated this 22nd day of February, 2017.

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12 Robert S. Lasnik
13 United States District Judge
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24 ¹ "Plaintiff's Motion for Leave to File Response to Clark Nuber's Motion for Certification" (Dkt.
25 # 338) and Clark Nuber's "Motion to Lift Stay" (Dkt. # 340) are also DENIED.